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February 10, 2015

VIA ELECTRONIC AND U.S. MAIL

Ms. Caroline Kwan
Remedial Project Manager
Special Projects Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866

Re: Progress Report No. 43 – January 2015
Newtown Creek Remedial Investigation/Feasibility Study

Dear Ms. Kwan:

Anchor QEA is submitting this monthly progress report for the Newtown Creek Remedial Investigation/Feasibility Study (RI/FS) on behalf of the Newtown Creek Group (NCG) Respondents to the Administrative Settlement Agreement and Order on Consent (Settlement Agreement or AOC). As set forth in Section 42 of said Settlement Agreement, this progress report is divided into the following areas:

1. Actions taken to comply with the Settlement Agreement during the previous month
2. Results of sampling and tests and all other data received by Respondents to the Settlement Agreement during the previous month
3. Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays
4. Work planned for the next 2 months with schedules relating to the overall project schedule for RI/FS completion

1. Actions Taken to Comply with Settlement Agreement during Previous Month

- Laboratory reports on six USEPA Phase 2 triad split samples (10-day toxicity and 28-day toxicity) were provided by USEPA on January 5.
- Several teleconferences between Anchor QEA, USEPA, and the City of New York were held in January (January 7, 12, 16, and 28) to discuss various point sources sampling issues, including low flow sampling methods, mobilization protocols, and dissolved/particulate analyses, amongst other topics.
- In an e-mail sent on January 15, USEPA formally extended the NCG Dispute Resolution regarding point sources low flow sampling methods from January 15 to January 22. On January 21, USEPA issued via an e-mail a decision on the low flow sampling methods dispute, which was to use strainers at different depths for various flow conditions and requested that the NCG submit a deviation memorandum summarizing these changes by January 27. On January 27, USEPA approved via e-mail submission of the deviation memorandum on January 28. On January 28, the NCG submitted via e-mail to USEPA the *Phase 2 RI Field Program – QAPP/FSAP Deviation Memorandum No. 7*, which summarized USEPA's dispute decision. On February 2, USEPA provided via e-mail conditional approval of the memorandum pending two minor revisions to FSAP Deviation Form 7-1. The revised deviation memorandum was submitted via e-mail to USEPA on February 2.
- A monthly update meeting was held with USEPA in New York City on January 23. Topics discussed during this meeting included the following: 1) Phase 2 field program update; 2) point sources sampling update; 3) point sources schedule; and 4) Phase 2 data release schedule.
- The *Phase 2 RI Field Program – QAPP/FSAP Deviation Memorandum No. 6* was submitted to USEPA on January 29. This deviation memorandum discussed minor field deviations associated with the groundwater, point sources, in-creek sediment trap, and East River surface water sampling programs.
- Comments on the Phase 2 Triad 10-day toxicity and bioaccumulation reports were provided via e-mail by USEPA on January 29.
- A preliminary Phase 2 RI data release schedule was submitted via e-mail to USEPA on January 30.
- The Phase 2 field investigation continued in January. Specifically, the following activities were performed:

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- Acoustic Doppler current profilers (ADCPs) and sondes retrieval, cleaning, and redeployment (week of January 5)
 - Subsurface sediment sampling and Phase 1 archive core analysis (week of January 5)
 - Groundwater investigation (weeks of January 12 and January 19)
 - East River surface water sampling (week of January 12)
 - Sediment traps retrieved, sampled, and redeployed (week of January 12)
 - Point sources
 - o Wet-weather sampling event (January 18 and 19)
 - Samples were collected from six locations (Morgan Avenue Interceptor [NCQ-077], Long Island Expressway runoff [LIE-001], Malu Properties/Former Ditmas Oil/Former Gulf Oil Terminal [MP-001], ExxonMobil Greenpoint Remediation Project [EM-001B], Motiva Brooklyn Terminal [MBT-001], and BP Products N America Brooklyn Terminal [BPBT-001]).
 - Samples were not collected at the Meeker Avenue location (MA-001) because sheetflow that would have normally discharged as overland flow was draining to a recently cleaned-out catch basin and discharging to the creek through a pipe. As directed by CDM Smith, a sample was not collected because the first flush had been missed.
 - Phase 2 field program planning and implementation continued in January.

2. Results of Sampling and Tests and Other Data Received by NCG Respondents during Previous Month

- Quality control (QC) review of field data from the groundwater program, East River surface water sampling (Event 7), surface water during point sources discharge events sampling (Event 1), sediment trap sampling (Event 6), metals speciation analysis, and point sources sampling (Events 1 and 2) was completed. Validated total suspended solids (TSS) data from the June and November wet-weather point sources sampling events were provided via e-mail on January 14. Validated TSS data from the December wet-weather point sources sampling event were provided via-email on January 21. These field and validated TSS data are included on the enclosed compact

disc (CD). QC review of the 28-day chronic bioassay testing report was also completed, and a copy is also included on the enclosed CD.

3. Encountered and Anticipated Problems and/or Delays and Solutions Developed and Implemented to Address Them

- The City of New York still has not provided information that has been requested of them from as far back as 2012 and formally requested through USEPA as part of the Information Exchange Protocol in February 2014. A listing of these requests is provided as an attachment to this monthly progress report. Per the Information Exchange Protocol, “Once the request is received the requested party has five business Days to provide the requested information or inform USEPA when the information will be available providing the rationale for the delay, subject to USEPA approval of the delay.” The requests are nearly a year past due, and the City of New York’s refusal to provide this information in a timely manner continues to hamper the NCG’s ability to advance the RI and associated studies.

4. Work Planned for the Next 2 Months with Schedules Relating to the Overall Project Schedule for RI/FS Completion

- A project update meeting with USEPA is scheduled for March 5, 2015.
- Revised NCG responses to USEPA comments on the draft *Preliminary Modeling Results Memorandum* (PMRM) are planned for submission in February.
- Revised NCG responses to USEPA comments on the draft *Modeling Approach Memorandum (2)* (MAM2) are planned for submission in February.
- Continue the Phase 2 field investigation in February and March, including:
 - ADCPs and sondes retrieval, cleaning, and redeployment
 - East River surface water sampling
 - Sediment trap retrieval and redeployment
 - Point sources sampling should not be performed at locations that have already been sampled twice until other locations have been sampled at least once.
 - Point sources sampling will be performed at locations with low flow discharges once the disputed protocols and procedures for sampling such discharges are resolved to avoid low-biased sample results.

- Point sources sample locations at the following New York City Department of Environmental Protection (NYCDEP) sampling locations cannot be sampled until the following issues are resolved:
 - o Traffic control at BB-009 (the replacement location for BB-013), NCB-083, and NCQ-029 – Traffic control permits need to be secured from the New York City Department of Transportation (NYCDOT) to sample these outfalls.
 - o Per USEPA's decision, combined sewer overflow (CSO) locations and NCB-002 cannot be sampled a second time until a decision is made about dissolved/particulate sampling.
 - o NYCDEP recommended alternative sampling locations for NCQ-633 and NCQ-632. These discharges will not be sampled pending USEPA's decision about moving these sampling locations.
 - o During the last event, overland flow at Meeker Avenue discharged through a catch basin at the end of Meeker Avenue rather than discharging via overland flow. NYCDEP needs to provide the invert elevation of the catch basin so that a decision can be made about future sampling at this location.
- Sampling at Waste Management of NY/Steel Equities (formerly POW; DAR No. 54)/Town, County and State Recycling, Inc. (aka Review Avenue Recycling, Inc.; DAR No. 145) is on hold until construction and stormwater improvements are complete.

If you have any questions regarding this progress report, please do not hesitate to contact me at (201) 571-0912 (e-mail: jquadrini@anchorqea.com).

Sincerely,



Jim Quadrini, P.E., BCEE
Anchor QEA, LLC

cc: Joseph Battipaglia, USEPA Region 2 Co-Remedial Project Manager
Michael Mintzer, USEPA Region 2 Assistant Regional Counsel
Ian Beilby, NYSDEC, Division of Environmental Remediation
W. David Bridgers, Common Counsel for Newtown Creek Group Respondents
Edward Leonard, CDM Smith

New York City Data Request

Item No.	Date Requested	Information Needed	Information Type (Data, Document, Model)	NYC Response, 3/27/2014	NYC Response, 2/3/2015	Status as of 2/5/2015
1	9/10/2012 ¹	Data from monitored/telemetered combined sewer infrastructure that discharges to Newtown Creek, including NCB-015	Data	As we have explained in response to prior requests, this program has not been completed, therefore data is not available.	The monitoring program will not be completed until at least April 2015, followed by validation.	Not provided. This request does not refer to the flow meter program but rather to telemetry data referenced in BMP reports. For example, Appendix 2 of the BMP Annual report (April 2013) lists that a telemetry system was installed in Regulator B-01 (NCB-015) in December 2010.
2	9/10/2012 ¹	Data and reports that are associated with the PCB and mercury studies and minimization program (including analytical data for PCB Aroclors, individual PCB congeners, and total PCBs; total mercury; and daily flow on the day the samples were taken), as required by Newtown Creek WPCP SPDES Permit No. NY0026204 (2010) and Bowery Bay WPCP SPDES Permit No. NY0026158 (2010; NC WPCP Permit Section XIV.j,k; BB WPCP Permit Section XV.f,g,h)	Data Document	In progress	We anticipate we can provide this by mid-February.	Not provided.
5	9/10/2012 ¹	a. Available CSO/SSO flow monitoring data, along with data used in the modeling for the Long-term Control Plan (including flow data for BB-026 and any additional locations that discharge to Newtown Creek that are available) b. A status update on NYC CSO flow metering program and a detailed schedule for completion of activities and transfer of data	Data	In progress	This is the same request as #1 and the response is the same.	Not provided. Item No. 1 referred to telemetry data from monitored combined sewer infrastructure that has been installed for sometime, and this request is specific to the flow monitoring study. Flow meters have been installed at some locations since at least June 2013 (equipment was observed during reconnaissance at BB-026) and some of these data have been presented by NYCDEP to the CAG.
7	9/10/2012 ¹	NYCDEP Shoreline Survey Reports for Newtown Creek and Bowery Bay Sewersheds (required to be submitted to NYSDEC on April 1, 2013), including the basis of the outfall categories (e.g., storm drain and direct discharge) and documentation of dry-weather discharge monitoring and investigations, as required by Newtown Creek WPCP SPDES Permit No. NY0026204 (2010) and Bowery Bay WPCP SPDES Permit No. NY0026158 (2010; NC WPCP Permit Section XIV.c; BB WPCP Permit Section XV.c)	Data Document	We have this document and will send it on a CD next week.	The request for GIS is a new request from NCG. DEP is following up with staff on this request.	Not provided. The report was provided on April 10, 2014, but the request was for electronic files, as well. This is not a new request. We have also requested the GIS files for this survey multiple times, and they have not been provided. The request for data associated with this report is included in USEPA's data request tracking spreadsheet. Note that the NCG has provided their shoreline survey to NYC in GIS format multiple times.
9	9/10/2012 ¹	URS Company, 1986. <i>Infiltration/Inflow Analysis, Bowery Bay WPCP</i> ; Task 1. Prepared for New York City Department of Environmental Protection as part of Flushing Bay Water Quality Facility Plan. September 1986. (including the appendices and supporting maps)	Document	In progress	Unavailable. We have been unable to locate a copy of this report from 1986.	Not provided.

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10	2/24/2014	Electronic files for data cited in the <i>Newtown Creek and Whale Creek Canal Maintenance Dredging Analytical Report and Sediment Sampling and Analysis Plan</i> (September 2013) including bathymetric survey, sediment, water, and air data	Data	We have this document and will send it on a CD next week.	We anticipate we can provide this by mid-February.	Not provided. The document was provided, but the request was for the electronic data files. Some but not all of the data from this report were provided by NYC in December 2014.
11	2/24/2014	Information and data required by Newtown Creek WPCP SPDES Permit No. NY0026204 (2010) and Bowery Bay WPCP SPDES Permit No. NY0026158 (2010; NC WPCP Permit Section XIV.h; BB WPCP Permit Section XV.h)., including the inventory of industrial facilities that discharge to MS4 pipes and monitoring data	Data Document	In progress	As the City has previously explained, there are no industrial facilities under the IPP that discharge to any MS4 pipes in the Newtown Creek or Bowery Bay drainage areas. We anticipate we can provide the most recent progress report by mid-February.	Not provided. A progress report from 2003 and inventories from 2006 and 2009 were provided. NYC is required to make these inventories every 3 years, so there should be one for 2012.
12	2/24/2014	a. Complete results of hydrographic surveys, including survey reports and survey results in electronic format, performed in October and November 1991 by Hartman Associates, Inc., for the U.S. Army Corps of Engineers and in June of 1999 by HydroData and referenced in the <i>Newtown Creek Water Quality Facility Planning Project Dredging Feasibility Study</i> (September 2000), prepared for NYCDEP by URS Greiner Woodward Clyde, Inc. b. <i>Newtown Creek Water Quality Facility Planning Project, Sediment Sampling and Analysis</i> (2000), prepared by Lawler, Matusky, and Skelly Engineers, LLP (under subcontract to URS Greiner Woodward Clyde, Inc.) and prepared for NYCDEP	Data Document	In progress	(a) complete as of January 31, 2015. (b) We are following up on this request. Please clarify what else, if anything, is considered outstanding.	1999 bathymetry data for English Kills were received on October 1, 2014. The November 1991 survey was not provided with reason given that Hartman Associates is out of business. However, because URS conducted the 1991 to 1999 bathymetric analysis, should they have access to the 1991 bathymetry data? Part b requests are also outstanding. This request includes both the referenced document and the data collected as part of the project in electronic form.
13	2/24/2014	Complete results of hydrographic survey, including survey reports and survey results in electronic format for survey shown on Capital Project WP-169 English Kills Enhanced Aeration Zone 2 Contract CSO-NC-2 aeration system plans attached to Aeration System Permit (NAN-2011-00680)	Data Document	We have this preconstruction survey and will send it on a CD next week. We will send the postconstruction survey when it becomes available.	We anticipate we can provide this by mid-February.	The request was for the survey in electronic format, and it was not provided.

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14	2/24/2014	<p>a. Results of 2010, 2011, 2012, and 2013 annual priority pollutant scans of samples collected from the Newtown Creek WPCP and Bowery Bay WPCP influent and the Newtown Creek WPCP effluent, as required by Newtown Creek WPCP SPDES Permit No. NY0026204 (2010) and Bowery Bay WPCP SPDES Permit No. NY0026158 (2010); also subsequent HIM program data, as required by Newtown Creek WPCP SPDES Permit No. NY0026204 (2010; NC WPCP Permit Section XIV.f; BB WPCP Permit Section XV.f)</p> <p>b. Data referred to in the June 13, 2013 Municipal Fact Sheet for the Newtown Creek Wastewater Treatment Plant, including data provided to NYSDEC as part of the SPDES NY-2A permit application and sampling data provided to NYSDEC on May 11, 2011, and subsequent sampling data from April 30, 2012, and June 28, 2012</p> <p>c. Specific information (including the point in the treatment process and the configuration of infrastructure) about the locations where these influent and effluent samples were/are collected at the Newtown Creek WPCP and influent samples are collected at the Bowery Bay WPCP</p>	Data	In progress	We anticipate we can provide this by mid-February.	Not provided.
15	2/24/2014	<p>a. Daily TSS and flow measurements required by Newtown Creek WPCP SPDES Permit No. NY0026204 (2010) and Bowery Bay WPCP SPDES Permit No. NY0026158 (2010; NC WPCP Permit Section IV; BB WPCP Permit Section IV)</p> <p>b. All historical TSS and flow data for the Newtown Creek WPCP and Bowery Bay WPCP</p> <p>c. Specific information (including the point in the treatment process and the configuration of infrastructure) about the locations where these TSS and flow measurements-were/are collected at the Newtown Creek WPCP and at the Bowery Bay WPCP</p>	Data	In progress	The City will aim to provide an update on this item later this week.	Not provided.
18	2/24/2014	TSS concentration data (surface and bottom) collected at NYC Water Quality Station E2 (located in East River near Newtown Creek) for the following years: 2003, 2004, 2005, 2006, 2007 and 2012; these data are not available via downloading from an NYC website. NYC presented temporal plots of TSS concentration data collected at Station E2 for 2005 through 2012 in Attachment C of NYCDEP Comments to the <i>Phase 2 Remedial Investigation Work Plan – Volume 1</i> (January 29, 2014).	Data	We have this data and will send it on a CD next week.	Complete. This data set has been provided in full.	The data was provided as a PDF table. Is an Excel file available?
19	2/24/2014	<p>Copies of the following reports, as well as data presented in them:</p> <ul style="list-style-type: none"> – URS Corporation 2008 – Habitat Monitoring Work Plan, English Kills Aeration Facility – URS Corporation 2008 – Habitat Monitoring Data Summary Report, Pre-Operational Conditions, English Kills Aeration Facility – URS Corporation 2009 – Habitat Monitoring Data Summary Report, Post-Operational-Year 1 Conditions, English Kills Aeration Facility – URS Corporation 2010 – Habitat Monitoring Data Summary Report, Post-Operational-Year 2 Conditions, English Kills Aeration Facility 	Data Document	In progress	We are following up on this request for data and will provide an update shortly.	The reports were provided, but the data referenced in these reports were requested and not provided.

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Item No.	Date Requested	Information Needed	Information Type (Data, Document, Model)	NYC Response, 3/27/2014	NYC Response, 2/3/2015	Status as of 2/5/2015
20	12/22/2014	During the USEPA conference call conducted on December 22, 2014, the NYCDEP committed to providing the following information and data to the NCG and USEPA: 1) a technical memorandum that explains the methodology used to calculate the Whale Creek discharges on a 1-hour frequency; 2) estimates of Whale Creek discharges on a 1-hour frequency for 1992 through 2007, 2013, and 2014; 3) temperature, salinity, and TSS concentration data collected at Station E2 for 2014; and 4) 1999 bathymetry data for East Branch and Maspeth Creek to the NCG. Note that NYCDEP provided 1999 bathymetry data for English Kills to the NCG on October 1, 2014, but they have not fulfilled the original request, which included the bathymetry data for East Branch and Maspeth Creek. The NCG needs to receive all of this information and data from NYCDEP by March 1, 2015. Failure by NYCDEP to provide this information and data by this date will cause delays in the Phase 2 modeling work and negatively impact the project schedule.	Data Document	N/A	This is a new request. The City has provided some of this data and will make efforts to provide the remainder by March 1, 2015.	Not provided. This information and data are needed by March 1, 2015.

Notes:

1 = In some cases, the request has been updated to be more specific or include more recent information that became available since the previous request.

BB = Bowery Bay

BMP = best management practice

CAG = Community Advisory Group

CD = compact disc

CSO = combined sewer overflow

GIS = Geographic Information System

HIM = high intensity monitoring

MS4 = municipal separate storm sewer system

N/A = not applicable

NC = Newtown Creek

NCB = Newtown Creek Brooklyn

NYC = New York City

NYCDEP or DEP = New York City Department of Environmental Protection

NYSDEC = New York State Department of Environmental Conservation

PCB = polychlorinated biphenyl

SPDES = State Pollutant Discharge Elimination System

SSO = sanitary sewer overflow

TSS = total suspended solids

USEPA = U.S. Environmental Protection Agency

WPCP = Water Pollution Control Plant